HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. 1264 of 2003 (SS)

Dhan Singh vs. B.S.A.

Approved for reporting.

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~~Not approved for reporting~~

Date of decision. 21.10.2003

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No.1264 of 2003 (SS)

Dhan Singh s/o Sri Chandan Singh
Assistant Teacher, Junior High School Udri
Block Dunda, District Uttarkashi …..……. Petitioner

Versus

District Basic Education Officer,
Uttarkashi ……. Respondent

Sri S. N. Babulkar, Advocate for the petitioner
H.M. Raturi, Advocate for the respondent

Hon'ble Rajesh Tandon, J.

Heard the learned counsel for the parties at length.

The present writ petition has been filed for issue of a writ or direction in the nature of certiorari calling for the records and quashing the order dated 30.6.2003 passed by the respondent for the transfer of the petitioner from Junior High School, Udri to Junior High School Fitari.

Briefly stated the facts giving rise to the present writ petition are that the petitioner is posted in Junior High School Udari, Block Dunda, District Uttarkashi. The transfer order dated 30.6.2003 was communicated to the petitioner on 16.10.2003 i.e. after four months in the mid-session. The petitioner's children are studying in Class 10th

and 12th in G.I.C. Mukhaim and Higher Secondary School, Gakangaon, District Uttarkashi. It is very difficult for the petitioner to shift the children at the distance place at Junior High School, Fitari Block Mori where the petitioner has been transferred.

A perusal of the transfer order dated 13.6.2003 shows that the same was served on 16.10.2003. The transfer order shows that petitioner has been transferred in the administrative exigency as well as in the public interest. As many as 13 persons have been transferred by that order.

So far as the transfer is concerned no interference can be made under Article 226 of the Constitution of India.

It has been held by the Apex Court in the case *Shilpi Bose and others vs. State of Bihar and others AIR 1991 SC 532* as under:

"In our opinion, the courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from the one place to the other. Transfer order issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or

orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department. If the courts continue to interfere with day to day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration, which would not be conducive to public interest. The High Court over looked these aspects in interfering with the transfer orders."

It is well settled that the transfer is an exigency of service. However option for the petitioner to approach the higher authorities is available and the petitioner are at liberty to approach the higher authority.

Sri S.N. Babulkar learned counsel for the petitioner has placed reliance on the case of Director of School Education vs. O. Karuppa Thevan and another (1994 Supp (2) Supreme Court Cases 666. The Apex Court has held as under:

"When the authorities made the transfer for the exigencies of administration. However, the learned counsel for the respondent, contended that in view of the fact that respondent's children are studying in school, the transfer should not have been effected during mid-academic term. Although there is no such rule, we are of the view that in effecting transfer, the fact that the children of an employee are studying should be given due weight, if the exigencies of the service

are not urgent. The learned counsel appearing for the appellant was unable to point out that there was such urgency in the present case that the employee could not have been accommodated till the end of the current academic year. We, therefore, while setting aside the impugned order of the Tribunal, direct that the appellant should not effect the transfer till the end of the current academic year. The appeal is allowed accordingly with no order as to costs."

The petitioner has already made a representation to the higher authority of the Department who shall pass appropriate orders in the light of the observations made above after hearing the petitioner. The transfer order may be kept in abeyance till the present academic session. The petitioner apprehends that his salary shall not be paid. Suffice it to observe that the respondent shall pay regular salary to the petitioner.

With the aforesaid observations the writ petition is disposed of. No order as to costs.

21.10.2003 **(Rajesh Tandon, J.)**
*Dhyani